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| EXAMINER |
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MILEF, ELDA G

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| ART UNIT | PAPER NUMBER |
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3694

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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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|------------------------------|--------------------------------------|----------------------------------------|--|
| Office Action Summary | Application No. 09/920,573 | Applicant(s) SCHWANKL ET AL. | |
| | Examiner Elda Milef | Art Unit 3694 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18,20-24,32-48,50-54,61 and 62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18,20-24,32-48,50-54,61 and 62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/11/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the Claims

1. This office action is in response to the amendments submitted by the applicants on 8/11/2009.

- Claims 19, 25-31, 49, 55-60 are cancelled.
- Claims 1-4, 6, 10, 32, 36-40, 50-54, 61, and 62 are amended.
- Claims 1-18, 20-24, 32-48, 50-54, 61-62 are pending in the application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 6-17, 21-24, 32, 36-47, 51-54, 61-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillman (PG. Pub. No. 2002/0147674).in view of Wellman (US 6,952,682) in further view of Tozzoli et al. (US 5,717,989)

Re claim 1: Gillman discloses:

recording a pre-order relating to an item in a processor-implemented database of the transaction facility, the pre-order specifying a plurality of pre-order attributes ("In the reverse auction, the buyer preferably specifies a good and/or service to be provided by a supplier.")-see para. 11, ("RFQ (Request for Quote)"), para. 13 and para. 30. Gillman

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does not disclose that the pre-order attributes include a minimum pre-order product condition and minimum seller rating. Wellman however, teaches a multi-attribute trading system including the buyer/seller specifying a numerical value corresponding to the quality of goods or services and attributes including a buyer/ seller ratings –see col. 4 line 51 to col. 5 line 33; Figs. 2-3. It would have been obvious to one having ordinary skill in the art to include in the in the electronic buying and matching system and method of Gillman the ability to include buyer/seller ratings and quality of goods and services as attributes as taught by Wellman since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

receiving an offer to sell the item at the transaction facility, the offer specifying a plurality of offer attributes (to which interested suppliers may provide responses (“preferably including counter-terms such as the supplier’s suggested price, delivery date or schedule and any other relevant terms and conditions for providing the product to the buyer.”))-see para. 30;

automatically performing a matching operation to detect a correspondence between the pre-order and the offer, the matching operation utilizing at least one pre-order attribute of the plurality of pre-order attributes and at least one offer

attribute of the offer attributes to detect the correspondence (“the present invention relates to systems and methods for dynamically matching, in a networked environment, a person or business entity requesting a specialized product...with a

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person or business entity capable of providing that product.”)-see para. 10 and (“buyer describes good and/ or service which it wishes to procure”)-see para. 30, and para. 32. Gillman discloses an electronic buying system and method that dynamically matches, over the World Wide Web, a person or business entity requesting a specialized product with a person or entity capable of providing that product. -para. 10. Gillman further discloses (“The electronic buying system may also allow a supplier to bid on a RFQ using a self-adjusting bid. A self-adjusting bid gives a supplier increased bidding flexibility while decreasing the amount of time spent watching the auction progress. With this type of bid, the supplier's offer will be automatically lowered if a lower price is entered (bid) by a competing supplier. The supplier preferably determines the bid increment (decrement) for this type of bid, and the supplier also ...has the ability to specify a floor...”)-see para. 43. Gillman further discloses the self-adjusting feature which automatically adjusts the price so that a bidder need not continually monitor a particular auction to succeed. -para. 13.

responsive to the processor-implemented matching logic detecting a correspondence between the pre-order and the offer pars. 42, 48-49. Gillman and Wellman disclose automatic matching of attributes but do not disclose automatically performing a transaction when the plurality of pre-ordered attributes are satisfied by the plurality of offer attributes. Tozzoli however, teach in accordance with the seller's instructions, the trade system either transmits to the seller all buyers' offers which meet the seller's terms and for which funding is guaranteed, or automatically accepts a buyer's offer, e.g., the first buyer offer that meets the seller's terms, or the best price

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buyer offer. Col. 7 lines 10-63. It would have been obvious to one having ordinary skill in the art to include in the electronic buying and matching system and method of Gillman and Wellman the ability to automatically accept a buyer's offer that meets the seller's criteria as taught by Tozzoli since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Re claim 2: Gillman discloses wherein the at least one pre-order attribute includes an item price-see para.30; an item descriptor (Fig. 3 (350) item description), and a pre-order expiration specification (Fig. 3 (360) quoting ends)

Re claim 6: Gillman discloses wherein one offer attribute includes an item price ("interest suppliers may provide responses preferably including counter-terms such as the supplier's suggested price...")-see para. 30; seller identifier (screen name para. 38) and item descriptor (terms and conditions. para. 41).

Re claim 7: Gillman discloses the matching operation utilizes multiple pre-order attributes and multiple offer attributes to detect the correspondence.-see para. 32.

Re claim 8: Gillman discloses wherein the correspondence includes a correspondence above a minimum threshold –see (bid floor, self-adjusting bid, bid increments) para. 43.

Re claim 9: Gillman discloses the pre-order attributes specifies a criterion, and the detecting of the correspondence includes determining whether the criterion is met or exceeded.-see para. 30, (information about the product), also see pars. 32, 38, 42.

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Re claims 10 and 13: Gillman discloses communicating the pre-order to a seller from which the offer to sell was received and the pre-order communicating a subset of the plurality of pre-order attributes to the seller. –see pars. 30,34,35,42.

Re claim 11: Gillman disclose the communication of the pre-order to the seller occurs prior to a publication of the offer to sell by the transaction facility.-see para. 35

Re claim 12: Gillman disclose wherein the communication of the pre-order includes communicating to the seller a user-selectable option to instantly satisfy the pre-order with the offer thereby to establish the transaction.-see (“the system allows the buyer to have broad discretion to prematurely end the bidding, whether or not a ‘winner’ is chosen and/or a deal for the forging is consummated.”)-see para. 45.

Re claims 14-16: Gillman discloses “Buyers 40 and suppliers 30 may gain entry to this web-based system...”)-see pars. 27-29.

Re claim 17: Gillman discloses including communicating comparative price information to the seller in conjunction with the pre-order-see para. 39.

Re claim 21: Gillman discloses the item includes any one of a group of items including goods and services.-see pars. 11, 87.

Re claims 22-24: Gillman discloses wherein multiple instances of the item are in existence, and the pre-order relates to any one of the multiple instances of the item that satisfies the pre-order attributes, wherein the offer to sell relates to a specific instance of the multiple instances of the item, and wherein a single instance of the item is in existence, and both the pre-order and the order relate to the single instance of the item. –see pars. 10, 13, 30,32, 35.

Re claims 32, 36-47, 51-54: Further a system would have been necessary to perform the method of previously rejected claims 1,2, 6-17, 21-24 and are therefore rejected using the same art and rationale.

Re claim 61: Further a commerce system would have been necessary to perform the method of previously rejected claim 1 and is therefore rejected using the same art and rationale.

Re claim 62: Further a machine readable medium would have been necessary to perform the method of previously rejected claim 1 and is therefore rejected using the same art and rationale.

3. Claims 3, 4, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillman in view of Wellman, and Tozzoli as applied to claims 1 and 61 above and further in view of Force (US Patent No. 6,704,716).

Re claims 3,4: Although Wellman disclose seller reliability ratings, Gillman, Wellman and Tozzoli do not explicitly disclose wherein the seller rating is established based on a trading history of a seller from which the offer originates, the seller rating determined by input received from other users. Force however, teaches seller's rating

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determined by past transaction history, comments about the seller from previous bidders.-see col. 5 lines 61-64. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gillman, Wellman, and Tozzoli to explicitly include rating a seller based on past transaction history in order for the buyer to deal with seller's who are reputable.

Re claims 33, 34: Further a system would have been necessary to perform the method of previously rejected claims 3 and 4 and are therefore rejected using the same art and rationale.

4. Claims 5, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillman, Wellman, and Tozzoli as applied to claims 2 and 32 above and further in view of Godin (U.S. Patent No. 5,890,138).

Re claim 5: Gillman, Wellman, and Tozzoli do not specifically disclose the item description comprises a UPC code. Godin however, teaches a computer auction system supporting reverse auctions wherein the description of an item includes a UPC code.-see col. 3 lines 29-40 and Figure 4. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gillman, Wellman, and Tozzoli to include a UPC code in order for the buyer and seller to easily identify the product being auctioned.

Re claim 35: Further a system would have been necessary to perform the method of previously rejected claim 5 and is therefore rejected using the same art and rationale.

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5. Claims 18, 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillman, Wellman, and Tozzoli as applied to claims 17 and 47 above and further in view of Pepin (PG. Pub. No. 2002/0042835).

Re claim 18: Gillman, Wellman, and Tozzoli do not disclose wherein the comparative price information includes, for the item, a current low price for an item substantially similar to the current item and a minimum listing price. Pepin however, teaches (“the user may select then indication, which informs the users of all duplicate parts currently being offered in all marketplaces supported by system. In this manner, the user may check the terms and conditions price quantity, bid, value sold price of all products currently being auctioned for the similar products.”) –see para. 11. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gillman, Wellman, and Tozzoli to include the user checking the sold price, and bids of similar products being auctioned as taught by Pepin in order to ensure that the item being sold is priced properly and therefore provide the seller with the best selling price.

Re claim 48: Further a system would have been necessary to perform the method of previously rejected claim 18 and is therefore rejected using the same art and rationale.

6. Claims 20, 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillman, Wellman, and Tozzoli in view of Fickes. (Fickes, Michael. “Waste Web”. Waste Age. Overland Park: Aug. 2000. Vol. 31, Iss. 8, pg. SS6, 9 pgs.).

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Re claims 20: Although Gillman discloses the supplier submitting multiple job quotes or bids in pars. 13 and 44, Gillman, Wellman, and Tozzoli do not specifically teach the offer to sell is received as part of a batch of offers from the seller to sell a plurality of items. Fickes however, teaches ("Our software offers a way to put up their bid locations in a batch all at once. They transmit the data to us, and we put it up on the service. The same principle works for a small restaurant chain with five or six locations."). –see p. 10 para. 8. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gillman, Wellman, and Tozzoli to include receiving bids from a user by a batch process as taught by Fickes in order to provide the user the best price and to consolidate multiple orders.

Re claim 50: Further a system would have been necessary to perform the method of previously rejected claim 20 and is therefore rejected using the same art and rationale.

Response to Arguments

7. Applicant's arguments with respect to claims 1-18, 20-24, 32-48, 50-54, 61-62 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elda Milef whose telephone number is (571)272-8124. The examiner can normally be reached on Monday -Friday 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571)272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Elda Milef
Examiner
Art Unit 3694

/James P Trammell/
Supervisory Patent Examiner, Art Unit 3694